

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2002 Biennial Regulatory Review)	WC Docket No. 02-313
)	

Comments of CenturyTel, Inc.

CenturyTel, Inc. (“CenturyTel”), through its attorneys, hereby offers the following Comments on the Public Notice issued in the above-captioned proceeding released September 26, 2002.¹

I. INTRODUCTION

Section 11 of the Communications Act of 1934, as amended,² requires that the Commission, in every even-numbered year beginning in 1998, review all of its rules “that apply to the operations or activities of any provider of telecommunications service,” and “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service.”³ The statute further requires the Commission to “repeal or modify any regulation it determines to be no longer necessary in the public interest.”⁴ The Commission declined in 1998 to limit its review “to situations where there is ‘meaningful economic competition,’ but adopt rule revisions . . . to promote meaningful deregulation and streamlining where competition or other considerations

¹ *The Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations within the Purview of the Wireline Competition Bureau*, Public Notice, (rel. Sept. 26, 2002) (“Public Notice”).

² 47 U.S.C. § 151 *et seq.*

³ 47 U.S.C. § 161(a).

⁴ 47 U.S.C. § 161(b).

warrant such action.”⁵ The Commission noted in the Public Notice that it expects to continue the practice of extending its review beyond the minimal statutory requirements in the 2002 biennial review.⁶ CenturyTel proposes that the Commission eliminate the price cap all-or-nothing rule and modify its rules to permit price cap carriers to exit the common line pool on a study-area-basis.

II. THE COMMISSION SHOULD ELIMINATE THE PRICE CAP ALL-OR-NOTHING RULE.

Section 61.41(c)(2) of the Commission’s rules provides that, when a non-price cap company acquires a price cap company, or any part thereof, the acquiring company shall become subject to price cap regulation, and must file price cap tariffs within a year of the closing of the transaction.⁷ Section 61.41(b) provides, similarly, that when any one of a group of affiliated telephone companies files a price cap tariff in one study area, all that company’s affiliates (except its average schedule affiliates) must file price cap tariffs in all their study areas.⁸ These rules make up what is commonly known as the price cap “all-or-nothing” rule. As CenturyTel has advocated in other proceedings,⁹ the Commission should eliminate the price cap all-or-nothing rule because it does not serve the public interest, and its elimination would give

⁵ *In the Matter of 1998 Biennial Regulatory Review – Part 61 of the Commission’s Rules and Related Tariffing Requirements, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12293 ¶1 (1999).

⁶ *Public Notice*.

⁷ 47 C.F.R. § 61.41(c)(2).

⁸ 47 C.F.R. § 61.41(b).

⁹ Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC, and TDS Telecommunications Corporation, filed Feb. 14, 2002 in CC Docket No. 00-256, CC Docket No. 96-45, and CC Docket No. 98-77 (“MAG Further Notice Comments”); Reply Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC, and TDS Telecommunications Corporation, filed Mar. 18, 2002 in CC Docket No. 00-256, CC Docket No. 96-45, and CC Docket No. 98-77 (“MAG Further Notice Reply Comments”); Comments of the Independent Telephone & Telecommunications Alliance, filed Feb. 14, 2002 in CC Docket No. 00-256, CC Docket No. 96-45, and CC Docket No. 98-77 (“ITTA Comments”).

both more carriers and more consumers the opportunity to experience the benefits associated with price cap regulation.¹⁰

The Commission should repeal the all-or-nothing rule because it does not serve the purpose for which it was adopted.¹¹ The price cap all-or-nothing rule was designed to prevent LEC holding companies from shifting the costs of their price cap affiliates to their rate-of-return affiliates.¹² The Commission was concerned that customers of rate-of-return carriers would pay higher rates, as a result of such cost-shifting. In addition, the Commission was concerned that, if allowed to convert between price cap and rate-of-return regulation, a LEC could “build[] up a large rate base under rate of return regulation, then opt for price caps again and cut its costs to an efficient level.”¹³

In spite of its initial concerns, the Commission has consistently granted waivers of the all-or-nothing rule in the context of acquisitions.¹⁴ Thus, the Commission’s experience

¹⁰ MAG Further Notice Comments at 27.

¹¹ *In the Matter of CenturyTel, Inc. and CenturyTel of Missouri, LLC, Petition of CenturyTel, Inc. and CenturyTel of Missouri, LLC Waiver of Sections 61.41(b) and (c) of the Commission’s Rules*, Petition for Waiver, at 5-9 (Missouri Petition); *In the Matter of CenturyTel, Inc. and CenturyTel of Alabama, LLC, Petition of CenturyTel, Inc. and CenturyTel of Alabama, LLC Waiver of Sections 61.41(b) and (c) of the Commission’s Rules*, Petition for Waiver, at 5-9 (Alabama Petition).

¹² *Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786, 6819 (1990) (“*LEC Price Cap Order*”), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990); *modified on recon.*, Order on Reconsideration, 6 FCC Rcd 2637 (1991) (“*LEC Price Cap Reconsideration Order*”), *aff’d sub nom. National Rural Telecom Ass’n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *further modification on recon.*, *Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Policy and Rules Concern Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991), *further recon.*, Memorandum Opinion and Order on Second Further Reconsideration, 7 FCC Rcd 5235 (1992).

¹³ *LEC Price Cap Order*, 5 FCC Rcd at 6819, ¶ 269.

¹⁴ *See, e.g., Kendall Telephone, Inc. and Wisconsin Bell, Inc.; Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules; Kendall Telephone, Inc. Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(6) and 69.3(g)(2) of the Commission’s Rules*, Memorandum Opinion and Order, 13 FCC Rcd 17739 (Com. Car. Bur. 1998); *Waivers Filed by Columbine Telephone Company, Inc., Silver Star Telephone Company, Inc., and U S West Communications, Inc. Concerning Section 61.41(c)(2)*

demonstrates that its cost-shifting and gaming concerns may have been overblown.¹⁵

Significantly, ALLTEL and Verizon have been operating under both price cap and rate-of-return regulation pursuant to waivers of the all-or-nothing rule for several years;¹⁶ yet no complaints

and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 3622 (Com. Car. Bur. 1997); *Petitions for Waivers Filed by Alpine Communications, L.C., Bulter-Breme Mutual Telephone Co., Clarksville Telephone Co., Dumont Telephone Co., Grand River Mutual Telephone Corp., Heartland Telecommunications Company of Iowa, Hickory Tech Corp., South Central Communications, Inc., Universal Communications, Inc. and US West Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2367 (Com. Car. Bur. 1997); *US West and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1775 (1995), *recon.* 12 FCC Rcd 4644 (1997); *Petition for Waivers Filed by GTE North Inc. and PTI Communications of Michigan, Inc., Concerning Sections 61.41(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13882 (1997); *Chautauqua & Erie Telephone Corp. and New York Telephone Co. Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules and Chautauqua & Erie Telephone Corp. Petition for Waiver of Sections 36.125(f), 36.154, and 61.41(c) of the Commission's Rules*, Memorandum Opinion and Order, 7 FCC Rcd 19 (1992); *Maine Telecommunications Group, Inc., WFT Acquisition Co., MCTA, Inc. Petitions for Waiver of Section 61.41(c) of the Commission's Rules*, 9 FCC Rcd 3082, Order (1994); *GTE Southwest Inc. and EagleNet, Inc. Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules and EagleNet, Inc., Petition for Waiver of Sections 61.41(c) and 69.3(e)(11) of the Commission's Rules*, Memorandum Opinion and Order, 9 FCC Rcd 1008 (1994); *Rochester Telephone Corp., Mid-South Telecommunications Co., Inc. and S&A Telephone Co., Inc. Joint Petition for Waivers of Sections 61.41(c), 61.41(d) and 69.3(e)(11) of the Commission's Rules and Regulations*, Order, 8 FCC Rcd 5243 (1993); *Minburn Telecommunications, Inc. Petition for Waiver of Sections 61.41(c) and (d) of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14184 (1999); *Petitions for Waiver and Reconsideration Concerning Sections 36.611, 36.612, 61.41(c), 69.605(c), 69.3(e)(11) and Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules Filed By Copper Valley Telephone Inc., Midvale Telephone Exchange, Table Top Telephone Co., and US West Communications*, DA-99-1845, Memorandum Opinion and Order (rel. Sept. 9, 1999).

¹⁵ MAG Further Notice Comments at 27-28.

¹⁶ See *ALLTEL Corp., Petition for Waiver of Section 61.41*, *ALLTEL Corp., Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules*, *CenturyTel, Inc. and CenturyTel of Alabama, LLC Petition for Waiver of Sections 61.41(b) and 61.41(c) of the Commission's Rules*, *CenturyTel, Inc. and CenturyTel of Missouri, LLC Petition for Waiver of Sections 61.41(b) and 61.41(c) of the Commission's Rules*, *Puerto Rico Telephone Company Petition for Waiver of Section 61.41 of the Commission's Rules*, or in the *Alternative, Request for Waiver of Section 54.303(a) of the Commission's Rules*, DA 02-888, Memorandum Opinion and Order (rel. Apr. 18, 2002) ("*All-or-nothing Waiver Order*"); *ALLTEL Corp., Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control*, Memorandum Opinion and Order, 14 FCC Rcd 14191 (1999) ("*ALLTEL/Aliant Merger Order*"); see also *Puerto Rico Telephone Company, Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, Order, 16 FCC Rcd 12343 (2001). Earlier this year the Commission waived the all-or-nothing rule to permit CenturyTel to operate under both price cap and rate-of-return regulation. See also *All-or-nothing Waiver Order*.

alleging cost-shifting or gaming have been filed.¹⁷ There simply is no evidence demonstrating that LEC holding companies operating simultaneously under price cap and rate-of-return regulation are engaging in cost-shifting or gaming.

Because there are sufficient safeguards in place to combat the Commission's gaming and cost-shifting concerns, the all-or-nothing rule is no longer necessary to serve the public interest.¹⁸ Indeed, through its consistent grant of waivers of the all-or-nothing rule, the Commission itself has acknowledged that its current safeguards are adequate. The Commission's structural separation rules, for example, ensure that cost-shifting is easily detectable, and consequently, unlikely.¹⁹ The Commission itself has recognized that accounting separation makes cost-shifting easily detectable.²⁰ The federal tariff process also provides additional safeguards in detecting cost-shifting.²¹ When filing federal tariffs, rate-of-return carriers are required to provide extensive cost support data that is thoroughly examined by the Commission, access customers, and end-users.²² Indeed, the interexchange carriers actively review tariffs filed by rate-of-return carriers.²³ To prosecute carriers that engage in cost-shifting, the FCC has a full panoply of enforcement tools at its disposal, including the authority to suspend and investigate tariffs,²⁴ to prescribe just and reasonable rates,²⁵ and to adjudicate

¹⁷ MAG Further Notice Reply Comments at 3-5.

¹⁸ MAG Further Notice Comments at 29-32; MAG Further Notice Reply Comments at 5-8.

¹⁹ MAG Further Notice Comments at 30-31; MAG Further Notice Reply Comments at 5.

²⁰ *ALLTEL/Aliant Merger Order*, 14 FCC Rcd at 14205, ¶ 38 (observing that, while “[s]tructural separation does not cure the incentive to shift costs,” it “makes cost shifting detectable”).

²¹ MAG Further Notice Comments at 31.

²² MAG Further Notice Comments at 31; MAG Further Notice Reply Comments at 6.

²³ *See e.g.*, Petition of GCI (filed Dec. 21, 2001) in CC Docket No. 02-36, CCB/CC Docket No. 01-28; Petition of AT&T Corp. (filed Dec. 26, 2001) in CC Docket No. 02-36, CCB/CC Docket No. 01-28.

²⁴ 47 U.S.C. § 204.

²⁵ 47 U.S.C. § 205.

complaints alleging cost-shifting.²⁶ Similarly, rigorous accounting review and annual or biennial rate cases also are common at the state level, yet another enforcement tool to guard against attempts to shift costs unlawfully or to game the system.²⁷

The all-or-nothing rule is a perfect candidate for elimination because it is no longer, and perhaps never was, necessary to serve the public interest and therefore should be eliminated pursuant to the Commission's Section 11 authority. The rigidity of the price cap all-or-nothing rule prevents carriers from electing price cap regulation for certain of their study areas, thereby depriving consumers and carriers of the benefits of price cap regulation, including better access to capital markets.²⁸ In so doing, consumers, carriers, and competition are all harmed. The rule hampers the ability of rate-of-return carriers to raise capital and prohibits the introduction of attractive rate plans permitted under price cap regulation. Furthermore, seeking a waiver of the price cap rule adds regulatory uncertainty to the acquisition process and increases the petitioner's transactional costs.²⁹

Competition in areas served by rate-of-return carriers has increased significantly since the all-or-nothing rule was adopted and has outgrown its usefulness.³⁰ Rate-of-return carriers need to be able to respond to competition and require access to the capital markets. Those companies that could operate successfully under price cap regulation, however, are hampered by the all-or-nothing rule because even the smallest of the companies' affiliates would be required convert to price cap regulation. The Commission itself has acknowledged that some

²⁶ 47 U.S.C. § 208.

²⁷ MAG Further Notice Comments at 30-31.

²⁸ MAG Further Notice Comments at 27-28.

²⁹ MAG Further Notice Comments at 29.

³⁰ MAG Further Notice Comments at 27.

carriers may not operate successfully under price cap regulation.³¹ The public interest is not served by requiring that a newly elected price cap carrier convert all of its properties to price cap regulation simply because some of the exchanges may operate successfully under price cap regulation.³² Such conversion is particularly unnecessary when safeguards already exist to combat the Commission's concerns about cost-shifting and gaming.

III. THE COMMISSION SHOULD ELIMINATE THE COMMON LINE POOL ALL-OR-NOTHING RULE.

For similar reasons, the Commission should eliminate a portion of Section 69.3(e)(9) known as the pooling “all-or-nothing” rule. Section 69.3(e)(9) of the Commission's rules requires that, when a carrier elects to file its own carrier common line access tariff for one of its study areas, it must file its own tariff for all of its study areas, and thus exit the NECA common line pool altogether.³³ This rule does not serve the public interest because it mandates that a carrier that seeks to elect price caps and exit the pool as to some of its study areas must take all of its study areas out of the common line pool.³⁴ This discourages carriers from electing incentive regulation for any study areas. For this reason, the Commission should eliminate the last sentence of Section 69.3(e)(9), and instead give carriers the option of leaving the common line pool on a study-area-basis.

³¹ *LEC Price Cap Order*, 5 FCC Rcd at 6818, ¶¶262-63.

³² MAG Further Notice Comments at 32-33.

³³ 47 C.F.R. § 69.3(e)(9).

³⁴ *See* 47 C.F.R. § 69.3(h).

IV. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to eliminate the price cap all-or-nothing rule and the common line pool all-or-nothing rule so carriers may elect price cap regulation on a study-area-basis.

Respectfully submitted,
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